IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 277 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

ANUJ ROHITBHAI

Appearance:

1. INCOME TAX REFERENCE No. 277 of 1985
MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 14/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference, the following three questions are referred for opinion of this Court in respect of assessment year 1980-81. The first two questions are at the instance of the revenue and third question is at the instance of the assessee: -

(i) "Whether the Appellate Tribunal has not erred in law and on facts of the case in directing the Income tax Officer to take into consideration the depreciation in the value of the shares of Savaji Mills Ltd. at Rs.108-75 while computing the capital gains or loss arising on the sale of shares of Rajesh Textile Mills Ltd. ?"

(ii) "Whether, the Appellate Tribunal has not erred in law and on facts in directing the Income tax Officer to tax the capital gains in the hands of Rohit Family Trust and not in the hands of the assessee ?"

(iii) "Whether, on the facts and in the circumstances of the case the Appellate Tribunal was right in law in holding that deduction u/s,80T in respect of capital gain made on the sale of shares should be worked out after setting off the capital loss suffered on the sale of other shares ?"

2. Heard Mr. B.B. Naik, learned counsel for the revenue. Though served, none appears for the respondent-assessee..

3. As far as the first question is concerned, Mr. Naik fairly states that this question is covered in favour of the assessee by the decision of this Court in CIT vs. Suhashbhai Vadilal 239 ITR 362. We accordingly, answer question No.1 in the affirmative i.e. in favour of the assessee and against the revenue.

4. Coming to question No.2, Mr. Naik fairly states that the controversy raised herein is covered by the decision of this Court in Kum. Pallavai S. Mayor vs. CIT (1981) 127 ITR 701. We accordingly answer question No.2 in the affirmative i.e. in favour of the assessee and against the revenue.

5. Coming to question No.3, Mr. Naik learned counsel for the revenue points out that the controversy raised herein is covered in favour of the revenue by the decision of the Apex Court in H.H. Sir Rama Verma vs. CIT. 205 ITR 433 and that the said decision has been

followed by this Court in Ashaben Rohitbhai & Ors. vs. CIT 237 ITR 561. We accordingly answer question No.3 in the affirmative i.e. in favour of the revenue and against the assessee.

6. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

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